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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 JOSE MARIO QUINTERO BELTRAN,
15 Defendant.
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CASE NO. 5:21-MJ-00015-JLT

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
[PROPOSED] FINDINGS AND ORDER

DATE: June 1, 2021
TIME: 2:30 p.m.
COURT: Hon. Jennifer L. Thurston

17 This case is set for a preliminary hearing on June 1, 2021. May 13, 2020, this Court issued
18 General Order 618, which suspends all jury trials in the Eastern District of California “until further
19 notice.” Under General Order 618, a judge “may exercise his or her authority to continue matters,
20 excluding time under the Speedy Trial Act with reference to the court’s prior General Order 611 issued
21 on March 17, 2020 . . . with additional findings to support the exclusion in the Judge’s discretion.”
22 General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge “may order case-by-case
23 exceptions” to General Order 618’s provisions “at the discretion of that Judge or upon the request of
24 counsel, after consultation with counsel and the Clerk of the Court to the extent such an order will
25 impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13, 2020). This and previous
26 General Orders were entered to address public health concerns related to COVID-19.

27 Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later than 14 days
28 after initial appearance if the defendant is in custody,” unless the defendant consents and there is a

1 “showing of good cause”, or if the defendant does not consent and there is a “showing that extraordinary
2 circumstances exist and justice requires the delay.” Here, the defendant consents and there is good
3 cause.

4 Although the General Orders address the district-wide health concern, the Supreme Court has
5 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
6 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
7 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
8 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
9 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
10 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
11 or in writing”).

12 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
13 and inexcusable—General Orders 611, 612, 617 and 618 require specific supplementation. Ends-of-
14 justice continuances are excludable only if “the judge granted such continuance on the basis of his
15 findings that the ends of justice served by taking such action outweigh the best interest of the public and
16 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
17 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
18 the ends of justice served by the granting of such continuance outweigh the best interests of the public
19 and the defendant in a speedy trial.” *Id.*

20 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
21 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
22 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
23 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
24 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
25 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
26 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
27 September 11, 2001 terrorist attacks and the resultant public emergency).

28 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt

proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the preliminary hearing. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By previous order, this matter was set for preliminary hearing on June 1, 2021.
2. By this stipulation, defendant now moves to continue the preliminary hearing until **June 15, 2021, at 2:30 p.m.** and to exclude time between June 1, 2021, and June 15, 2021, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].
3. The parties agree and stipulate, and request that the Court find the following:
 - a) The government has represented that initial discovery associated with this case consists primarily of reports, recordings and photographs, and the government provided the defendant with initial discovery on April 16, 2021, and invited defense counsel to arrange to inspect and copy additional materials.
 - b) Counsel for defendant desires additional time to review the discovery, consult

1 with this client, conduct further investigation, and discuss a possible resolution with the
2 government.

3 c) Counsel for defendant believes that failure to grant the above-requested
4 continuance would deny him the reasonable time necessary for effective preparation, taking into
5 account the exercise of due diligence.

6 d) The government does not object to the continuance.

7 e) Pursuant to F.R.Cr.P. 5.1(c) and (d), a preliminary hearing must be held “no later
8 than 14 days after initial appearance if the defendant is in custody,” unless the defendant
9 consents and there is a “showing of good cause”. Here, the defendant consents and there is good
10 cause as set forth herein.

11 f) In addition to the public health concerns cited by General Order 617 and
12 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
13 this case because counsel and other relevant individuals have been encouraged to telework and
14 minimize personal contact to the greatest extent possible. It will be difficult to avoid personal
15 contact should the preliminary hearing proceed.

16 g) Based on the above-stated findings, the ends of justice served by continuing the
17 case as requested outweigh the interest of the public and the defendant in an indictment or trial
18 within the original dates prescribed by the Speedy Trial Act.

19 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
20 et seq., within which an indictment must be filed and within which a trial must commence, the
21 time period of June 1, 2021 to June 15, 2021, inclusive, is deemed excludable pursuant to 18
22 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by
23 the Court at defendant’s request on the basis of the Court’s finding that the ends of justice served
24 by taking such action outweigh the best interest of the public and the defendant in a speedy
25 indictment/trial.

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1 4. Nothing in this stipulation and order shall preclude a finding that other provisions of the
2 Speedy Trial Act dictate that additional time periods are excludable from the period within which an
3 indictment must be filed and a trial must commence.

4 IT IS SO STIPULATED.

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7 Dated: May 17, 2021

PHILLIP A. TALBERT
Acting United States Attorney

8
9 /s/ CHRISTOPHER D. BAKER
CHRISTOPHER D. BAKER
Assistant United States Attorney

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12 Dated: May 17, 2021

/s/ DAVID A. TORRES
DAVID A. TORRES
Counsel for Defendant
JOSE MARIO QUINTERO
BELTRAN

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17 **[PROPOSED] FINDINGS AND ORDER**

18 IT IS SO FOUND AND ORDERED this 18th day of May, 2021.

19 IT IS SO ORDERED.

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21 Dated: May 18, 2021

/s/ Jennifer L. Thurston
CHIEF UNITED STATES MAGISTRATE JUDGE